

REMARKS

Claim 5 has been amended to recite that the method for detection of nucleic acid of a pathogenic infectious agent. Support for this amendment can be found, at least, on page 4, lines 21-24 of the application. The claim has also been amended for clarity by sequentially indicating the steps of the recited method. Support for this amendment can be found in the claim as originally filed. No new matter has been added.

The Office Action states, in response to the applicants' response to the restriction requirement, that "absent evidence to the contrary, each such nucleotide sequences are presumed to represent an independent and distinct invention, subject to restriction requirement." Applicants again respectfully point out that the claims are directed to a method for detecting nucleic acid and any particular sequence does not represent a separate invention. The claims are not directed to a nucleic acid sequence invention and to limit the claims to any particular nucleic acid sequence is not consonant with the method recited in the claims, which should not be limited to a single nucleic acid sequence.

Objections to the Specification

The Office Action has objected to the specification because it contains an embedded hyperlink on page 29, line 22. Applicants have amended the specification to remove the embedded hyperlink and respectfully submit that this objection to the specification has been overcome. Reconsideration and withdrawal of this objection to the specification is respectfully requested.

Rejections under 35 U.S.C. § 102(e)

Claims 5, 6, and 8 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent No. 6,617,137 to Dean et al. (hereinafter "Dean").

Claim 5 has been amended to be directed to the detection of nucleic acid of a pathogenic infectious agent. Dean does not teach or suggest a method for detection of nucleic acid of a pathogenic infectious agent and therefore, for at least this reason, Dean does not anticipate claim 5. With respect to claims 6 and 8, claims 6 and 8 cannot be anticipated by Dean by virtue of their dependency from amended claim 5. Applicants respectfully submit that this rejection has been obviated and respectfully request reconsideration and withdrawal of this rejection.

Claims 5-6, and 8-16 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent No. 7,375,202 to Peiris et al. (hereinafter "Peiris I").

Applicants respectfully submit that Peiris I does not disclose a method that recites the sequential steps, as recited in claim 5, of isolating a nucleic acid of pathogenic infectious agent, amplifying the nucleic acid of the pathogenic infectious agent, and performing Real Time PCR on the nucleic acid of the pathogenic agent. The portions of Peiris I pointed out by the office action disclose different discrete approaches to the detection of specific nucleic acids but do not recite the steps recited in claim 5. Nucleic acids are disclosed in Peiris I (at column 27 lines 8-25) as directly being detected by a probe. Also, nucleic acids are disclosed in Peiris I (at column 27, lines 26-41) as being detected by reverse transcription polymerase chain reactions. Finally, nucleic acids are detected in Peiris I (at column 27, lines 41-54) as being detected by a real-time quantitative PCR assay. None of the approaches of Peiris I teach, suggest, or disclose the method recited in claim 5, which provides, after isolation of a nucleic acid, an amplifying step followed by a Real Time PCR step. With respect to claims 6, and 8-16, applicants respectfully submit that they are all not anticipated by virtue of their dependency from claim 5. Applicants respectfully submit that this rejection has been overcome and request reconsideration and withdrawal of this rejection.

Claims 5-16 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent No. 7,267,942 to Peiris et al. (hereinafter "Peiris II").

Applicants respectfully submit that Peiris II does not disclose a method for detection of nucleic acid of a pathogenic infectious that comprises the sequential steps of amplifying the nucleic acid of a pathogenic infectious agent followed by performing Real Time PCR on the nucleic acid of the pathogenic infectious agent. The section cited in the Office Action from Peiris II at column 11, lines 16-47, discloses the use of real-time quantitative PCR to detect the presence of hSARS virus. The amplification disclosed therein refers to the amplification that is part of the real time PCR. Both claims 5 and 10 refer to an additional amplification step, separate from, and prior to, the real time PCR step. Peiris II does not teach, suggest, or disclose such a separate amplification step prior to real time PCR. Applicants respectfully note that column 34, lines 49-64, of Peiris II, appears to have been cited in the Office Action in error, since this section refers to administering pharmaceutical composition.

Applicants respectfully submit that because all of the limitations of claims 5 and 10 are not found in Peiris II, Peiris II cannot anticipate claims 5 or 10. Moreover, claims 6-16, are not anticipated by Peiris II by virtue of their dependency from claim 5. Applicants respectfully submit that the rejection in the Office Action of claims 5-16 as being anticipated by Peiris II has been overcome and respectfully request reconsideration and withdrawal of this rejection.

All of the claims are believed to be in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the objection and rejections of the Office Action and allowance of the pending claims. If the Examiner has any questions, or believes that a telephone conference would expedite prosecution of this application, the Examiner is cordially invited to contact Applicants' attorney at the telephone number provided below.

If any additional fees are due, or an overpayment has been made, the Commissioner is authorized to charge, or credit, U.S. Deposit Account No. 08-1935 for such sum.

Respectfully submitted,



Franklin S. Abrams
Reg. No. 43,457
Attorney for Applicants

Dated: August 3, 2009

HESLIN ROTHENBERG FARLEY & MESITI P.C.

5 Columbia Circle

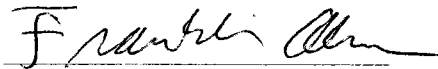
Albany, New York 12203

Telephone: (518) 452-5600

Facsimile: (518) 452-5579

Certificate of Transmission

I hereby certify that this correspondence is being submitted by electronic filing to: Commissioner for Patents, Alexandria, VA 22313-1450, on August 3, 2009.



Franklin S. Abrams
Reg. No. 43,457
Attorney for Applicants